

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

DEBBIE L. TREZVANT, TIMOTHY)	
CAHILL, and DEBORAH CHERYL ARCH,)	
each of them individually and on behalf of all)	
others similarly situated and similarly situated)	
current and former employees of Defendants,)	
Plaintiffs,)	
v.)	
)	
FIDELITY EMPLOYER SERVICES)	
CORPORATION, FIDELITY EMPLOYER)	CIVIL ACTION NO. 05-10673 WGY
SERVICES COMPANY LLC, and FMR)	
CORP.,)	
Defendants.)	

**JOINT MOTION REGARDING PROCEDURES FOR
PROVIDING NOTICE TO MEMBERS OF CONDITIONALLY CERTIFIED CLASS
AND TO AMEND JOINT CASE MANAGEMENT PLAN**

Defendants Fidelity Employer Services Corporation, Fidelity Employer Services Company LLC, and FMR Corp. (collectively, “Defendants”), with Plaintiffs Debbie L. Trezvant, Timothy Cahill, and Deborah Cheryl Arch (collectively, “Plaintiffs”) hereby jointly request that the Court enter an Order regarding the form and procedures by which the parties will provide notice of the pendency of this action to members of the class conditionally certified by the Court in this matter pursuant to 29 U.S.C. § 216(b) of the Fair Labor Standards Act (“FLSA”) on October 26, 2005. Through extensive negotiations, the parties have reached agreement on those procedures and now request that their agreement be made binding and entered as an Order of the Court. A Proposed Order is attached hereto as Exhibit A.

The parties have stipulated to the following:

1. The Conditional FLSA Class Members consist of all persons who were employed at Defendants' Merrimack, New Hampshire facility with the job titles of business analyst, reporting

analyst or project analyst and who worked for a business unit known as FESCo at any time from April 5, 2002 through April 5, 2005.¹

2. Within ten (10) days after the Court's Order on this joint motion, Defendants' counsel will provide to Plaintiffs' counsel a list containing the name and last known residential address of each Conditional FLSA Class Member.

3. Plaintiffs' counsel will, after receipt of the list described in paragraph 2, send by First Class U.S. Mail to each Conditional FLSA Class Member one copy of the Notice of Pendency of FLSA Collective Lawsuit and Consent to be "Party Plaintiff" Under Federal Fair Labor Standards Act attached hereto as Exhibit B. Plaintiffs will insert dates into Exhibit B at the places indicated in that document in accordance with this stipulation and the Court's Order on this joint motion.

4. Conditional FLSA Class Members who choose to assert claims under the FLSA, 29 U.S.C. § 201, *et seq.*, in this litigation must file a consent to join this action with the Court within forty-five (45) days after Plaintiffs' counsel's receipt of the list described in paragraph 2 (the "Opt-in Date"). Absent court approval or agreement between the parties through their counsel, Conditional FLSA Class Members who do not file a consent to join this action with the Court by the Opt-in Date may not assert claims under or recover damages pursuant to the FLSA in this action.

¹ Plaintiffs reserve all rights they may have regarding these dates.

5. The parties request that the Court approve this paragraph 5 in its entirety with both of its subparagraphs, and if the Court chooses not to approve it in its entirety, that the Court reject it in its entirety:

- (a) The Scheduling Order in this matter shall be entered or amended as follows: Motions to certify any class pursuant to Fed.R.Civ.P. 23 shall be filed by April 10, 2006. Oppositions to any such motion shall be filed within 21 days after such motions are filed. Replies (if any) shall be filed within 14 days after such oppositions are filed.
- (b) Between the date of the Court's Order on this joint motion and the Opt-in Date (the "Opt-in Period"), neither Plaintiffs nor Plaintiffs' counsel will initiate any communications with Conditional FLSA Class Members regarding the subject matter of this litigation, other than by sending one copy of the document described in paragraph 2 to each Conditional FLSA Class Member. Promptly after the date of the Court's Order on this joint motion, Defendants will instruct each of their employees who currently are managers or supervisors of Conditional FLSA Class Members in writing not to initiate communications with Conditional FLSA Class Members during the Opt-in Period regarding their decision to join or not join the litigation.

Respectfully submitted,
DEBBIE L. TREZVANT, TIMOTHY
CAHILL, and DEBORAH CHERYL ARCH,
By their attorneys,

/s/ Ira Spiro

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Dated: November 22, 2005

FIDELITY EMPLOYER SERVICES
CORPORATION, FIDELITY EMPLOYER
SERVICES COMPANY LLC and
FMR CORP.,
By their attorneys,

/s/ Richard L. Alfred

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CORPORATION, FIDELITY EMPLOYER)	CIVIL ACTION NO. 05-10673 WGY
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**PROPOSED ORDER ON JOINT MOTION REGARDING PROCEDURES FOR
PROVIDING NOTICE TO MEMBERS OF CONDITIONALLY CERTIFIED CLASS
AND TO AMEND JOINT CASE MANAGEMENT PLAN**

The Court orders as stated in paragraphs 1 through 5 of the parties' Joint Motion Regarding Procedures for Providing Notice to Members of Conditionally Certified Class and to Amend Joint Case Management Plan.

SO ORDERED

WILLIAM G. YOUNG
Chief United States District Judge

Dated: _____

NOTICE OF PENDENCY OF FLSA COLLECTIVE LAWSUIT

From: Spiro Moss Barness Harrison & Barge LLP, Attorneys at Law
Pierce & Mandell, P.C., Attorneys at Law
Joseph & Herzfeld, LLP, Attorneys at Law

To: Current and former employees of Fidelity Employer Services Corporation and/or Fidelity Employer Services Company, LLC and/or FMR Corp. (all are referred to collectively below as “FESCO”) who were employed as a “Business Analyst,” “Project Analyst,” and/or “Reporting Analyst” in **Merrimack, New Hampshire** any time between April 5, 2002 and April 5, 2005.

Re: Collective action lawsuit against FESCO under the federal Fair Labor Standards Act (FLSA).

The purpose of this Notice is to advise you of a lawsuit under the federal Fair Labor Standards Act that has been filed against FESCO and other companies and to advise you of the legal rights you may have in connection with that suit. The lawsuit is captioned *Trezvant, et al. v. Fidelity Employer Services Corporation, et al.*, and is pending in the U.S. District Court for the District of Massachusetts, Docket No. 05cv10673.

1. **DESCRIPTION OF THE LAWSUIT.**

The plaintiffs in this lawsuit are Debbie L. Trezvant, Timothy Cahill, and Deborah Cheryl Arch, who are all former employees of FESCO in Merrimack, New Hampshire. The plaintiffs filed this lawsuit on April 5, 2005. The law firms of Pierce & Mandell, P.C., Spiro Moss Barness Harrison & Barge LLP and Joseph & Herzfeld LLP represent those individuals in the lawsuit. FESCO is the defendant.

The claims in the lawsuit under the federal Fair Labor Standards Act (FLSA) are primarily that FESCO violated the FLSA by misclassifying its employees in several job classifications as “exempt” from the overtime pay requirements of the FLSA, and that they should have been classified as “non-exempt” employees entitled to overtime pay when they worked more than forty hours per workweek. The lawsuit seeks the FLSA remedy of double overtime pay for unpaid overtime, among other remedies.

FESCO denies the plaintiffs' claims and intends to present defenses that, if proven, would forever prevent plaintiffs and any person who chooses to join the litigation from receiving any monetary recovery for the claims alleged in the lawsuit. Among other defenses, FESCO contends that members of the class were and are properly treated as exempt from the FLSA’s overtime pay

requirements because the employees are and were salaried executive, administrative, professional, and/or computer employees as defined by the FLSA.

2. YOUR RIGHT TO MAKE A CLAIM IN THIS LAWSUIT.

If at any time between April 5, 2002 and April 5, 2005, you worked as a “Business Analyst,” “Project Analyst,” and/or “Reporting Analyst” with FESCO in Merrimack, New Hampshire, and you believe you worked more than forty (40) hours in at least one workweek, you have the right to assert a claim for overtime under the federal Fair Labor Standards Act (FLSA) in this lawsuit.

To assert a claim and participate in this litigation you must sign a written Consent to be a “party-plaintiff” in the lawsuit. This form will be filed in the Court. It is entirely your own voluntary decision whether or not to sign and file the consent. You may, if you choose, contact your own attorney, at your expense, to discuss whether to make a claim or participate in this lawsuit.

Regardless of your decision, it is against the law for your employer to retaliate against you for participating in this lawsuit or making a claim for overtime.

3. HOW TO MAKE A CLAIM IN THIS LAWSUIT.

Attached to this Notice is a form entitled “Consent to be ‘Party Plaintiff’ Under Federal Fair Labor Standards Act.” **In order to join this lawsuit and make a claim in it, you must fill out this form, sign it, and have it filed with the Court by [INSERT DATE]**

You have three options for filing the consent form:

(1) You can file the consent with the Court, located at John Joseph Moakley U.S. Courthouse, 1 Courthouse Way, Suite 2300, Boston, MA 02210.

(2) You can mail or overnight the form to the attorneys for plaintiffs, c/o Rebecca Sobie, 11377 W. Olympic Blvd., Fifth Floor, Los Angeles, CA 90064 in time for the attorneys to file it by **[INSERT DATE]**. A stamped, self-addressed envelope is enclosed for that purpose. The attorneys for plaintiffs will not charge you for this. The attorneys for plaintiffs request that if you send the consent form to them, please do so within a week of receiving it, to assure that the attorneys will have plenty of time to file your consent form.

or (3), You can give the form to your attorney to file with the Court at your own expense. You will be responsible for the charges of your own attorney, if there are any.

Clerks’ Office
John Joseph Moakley U.S. Courthouse
1 Courthouse Way, Suite 2300

Rebecca Sobie
Spiro Moss Barness Harrison & Barge LLP
Attorneys at Law
11377 West Olympic Boulevard, 5th Floor

Boston, MA 02210

Los Angeles, CA 90064
Phone (310) 235-2468
Fax (310) 235-2456

If you have any questions with respect to this suit, you may call Ira Spiro or Rebecca Sobie at Spiro Moss Barness Harrison & Barge LLP, phone number (310) 235-2468. The attorneys for plaintiffs will not charge you anything, unless they eventually obtain money for you in the lawsuit, and if they do, they will ask the court to award them a portion of the money obtained on your behalf.

You may also contact an attorney of your choice at your own expense.

4. THE LEGAL EFFECT OF FILING OR NOT FILING THE CONSENT FORM.

If you do not file a consent form, or have one filed for you, you will not receive any money or other relief for FLSA claims in the lawsuit in the event that monetary damages or other relief is awarded. You will retain your right to file a separate lawsuit using your own attorney at your expense, or representing yourself. Note that your rights in such a lawsuit, if any, might be lost or diminished by passage of time until you file such a lawsuit.

If you do file a consent form, or have one filed for you, you will be bound by the judgment of the court on all overtime issues in this case, win or lose. In addition, as a party plaintiff, you might be subject to discovery by the defendants in the lawsuit, which might include providing deposition or trial testimony under oath, responding to document requests, and/or responding to other requests for information pertinent to the case, but the attorneys for plaintiffs will attempt to prevent or limit your having to do so.

5. ALTHOUGH THE COURT HAS APPROVED THE SENDING OF THIS NOTICE, THE COURT EXPRESSES NO OPINION ON THE MERITS OF THIS LAWSUIT.

The court has not determined that FESCo engaged in any unlawful behavior. There is no money currently available to class members from this lawsuit, and there might or might not be in the future.

PLEASE DO NOT CALL OR WRITE THE COURT ABOUT THIS NOTICE.

Dated: _____

